



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

CHRISTUS ST ELIZABETH HOSPITAL
3701 KIRBY DRIVE SUITE 1288
HOUSTON TX 77098-3926

Carrier's Austin Representative Box

19

Respondent Name

INSURANCE CO OF THE STATE OF PA

MFDR Date Received

MARCH 19, 2007

MFDR Tracking Number

M4-07-4526-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated September 8, 2006: "Christus Hospital, St. Elizabeth, would like to appeal the denial on the hospital account...According to our notes, the denial was due to lack of authorization...This gentleman was admitted to our facility from the emergency department on April 5, 2006 for possible UTI...During the course of his hospital stay, he received intravenous antibiotics and wound care. Arrangements were made for the patient to be discharged with outpatient treatment, and the patient was discharged on April 26...When this gentleman presented to our emergency department, the only insurance information he provided was his Medicare card. It was not until April 24 did his wife present the worker's compensation information to our facility, at which point we began the process of getting authorization."

Requestor's Supplemental Position Summary Dated September 20, 2006: "...our law firm represents Christus St. Elizabeth Hospital located in Beaumont, Texas, in an effort to secure payment for the medical care and treatment provided to [Claimant], in reference to the above-captioned workers' compensation matter...Gallagher Bassett denied the claim for no authorization. We request reconsideration on the basis of the enclosed medical records, which provide the necessary documentation to support the claimant's treatment of his infection and inflammatory reaction due to other internal orthopedic device/implant/graft...Per DWC Rule 134.401 (c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40K, the entire admission will be paid using the stop-loss reimbursement factor ("SLRF") of 75%."

Requestor's Supplemental Position Summary Dated March 16, 2007: "I have been retained by Christus St. Elizabeth Hospital located in Beaumont, Texas, in its effort to secure payment for the medical care and treatment provided to GCR Tire's employee [Claimant]...In closing it is the position of Christus St. Elizabeth Hospital that all charges relating to the admission of [Claimant] are due and payable as provided for under Texas law and Rules of the Division, as currently adopted and published at 28 TAC § 134.400, *et seq.*"

Amount in Dispute: \$134,897.32

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated April 11, 2007: "Requestor billed a total of \$179,863.10. The Requestor asserts it is entitled to reimbursement in the amount of \$134,897.32, which is 75% of the total charges. Requestor has admitted that the service was not preauthorized. In the alternative, entitlement to this alternative,

exceptional method of calculating reimbursement and has not otherwise properly calculated the audited charges... Failure of the provider to obtain preauthorization is a complete defense to the payment of the bill. For example see SOAH decision 453-02-0959. The provider is accordingly barred from receiving any benefits under the Act... To qualify for stop-loss the services provided by the hospital must be unusually costly to the hospital as opposed to unusually priced to the carrier. The services provided by the hospital (not by a physician attending a patient while in the hospital) must be unusually extensive. Exceptional cases will be entitled to reimbursement under the stop loss exception. There is no evidence submitted by the hospital demonstrating that the services provided by the hospital were unusually extensive. There is no evidence of 'complications, infections, or multiple surgeries' requiring additional services by the hospital. Secondly, there is no evidence that the services provided by the hospital were unusually costly to the hospital. The carrier is entitled to audit and reduce the hospital bill per TWCC rule 133.301. That same rule allows the carrier to audit for "correct calculations." Inflated invoices do create unusual costs, they simply create inflated prices. That cannot be a correct calculation since it violates the objective of achieving effective medical cost control."

Respondent's Supplemental Position Summary Dated September 9, 2011: "Respondent submits this Respondent's Post-Appeal Supplemental Response, as a response to and incorporation of the Third Court of Appeals Mandate... Based upon Respondent's initial and all supplemental responses, and in accordance with the Division's obligation to adjudicate the payment, in accordance with the Labor Code and Division rules, Requestor has failed to sustain its burden of proving entitlement to the stop-loss exception. The Division must conclude that payment should be awarded in accordance with the general *per diem* payment in accordance with 28. Tex. Admin. Code § 134.401 (repealed). Otherwise, the Division should determine the proper audited charges in accordance with Division audit obligations and rules..."

Responses Submitted by: Flahive, Ogden & Latson, Attorneys at Law, P.C.

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
April 5, 2006 through April 26, 2006	Inpatient Hospital Services	\$134,897.32	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.1, 27 *Texas Register* 4047, effective May 16, 2002, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.
4. 28 Texas Administrative Code §134.600, effective March 14, 2004, requires preauthorization for inpatient hospital services.
5. 28 Texas Administrative Code §133.1, effective July 15, 2000, defines a medical emergency.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits

- 62- Payment denied/reduced for absence of, or exceeded, pre-certification/authorization.

Issues

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Does a preauthorization issue exist in this dispute?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services.” Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The division received supplemental information as noted in the position summaries above. The supplemental information was shared among the parties as appropriate. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that “Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection...” 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states “...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold.” Furthermore, (A) (v) of that same section states “...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed...” Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$179,863.10. The Division concludes that the total audited charges exceed \$40,000.
2. 28 Texas Administrative Code §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that “This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission.” The Third Court of Appeals' November 13, 2008 opinion states that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services” and further states that “...independent reimbursement under the Stop-Loss Exception was meant to apply on a case-by-case basis in relatively few cases.” The requestor in its position statement states that “Per DWC Rule 134.401 (c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40K, the entire admission will be paid using the stop-loss reimbursement factor (“SLRF”) of 75%.” This statement does not meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C) because the requestor presumes that the disputed services meet Stop-Loss, thereby presuming that the admission was unusually extensive. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C).
3. 28 Texas Administrative Code §134.401(c)(6) states that “Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker.” The Third Court of Appeals' November 13, 2008

opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually costly services. The requestor's position statement does not address how this inpatient admission was unusually costly. The requestor does not provide a reasonable comparison between the cost associated with this admission when compared to similar surgical services or admissions, thereby failing to demonstrate that the admission in dispute was unusually costly. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(6).

For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement.

4. According to the explanation of benefits, the disputed services were denied reimbursement based upon reason code "62."

28 Texas Administrative Code §134.600(b) states "The carrier is liable for all reasonable and necessary medical costs relating to the health care:

(1) listed in subsection (h) or (i) of this section, only when the following situations occur:

(A) an emergency, as defined in §133.1 of this title (relating to Definitions);

(B) preauthorization of any health care listed in subsection (h) of this section was approved prior to providing the health care."

28 Texas Administrative Code §133.1(a)(7) defines a medical emergency as "Emergency--Either a medical or mental health emergency as described below: (A) a medical emergency consists of the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health and/or bodily functions in serious jeopardy, and/or serious dysfunction of any body organ or part.

The requestor states in the position summary that "This gentleman was admitted to our facility from the emergency department on April 5, 2006 for possible UTI."

The Division finds that the requestor did not submit emergency room records or records to support the admission was an emergency as defined in 28 Texas Administrative Code §133.1(a)(7)(A); therefore, the disputed services required preauthorization.

28 Texas Administrative Code §134.600(h)(1) states "The non-emergency health care requiring preauthorization includes: inpatient hospital admissions including the principal scheduled procedure(s) and the length of stay."

The requestor did not support preauthorization was obtained for the disputed dates of service; therefore, a preauthorization issue exists in this dispute. As a result, reimbursement cannot be recommended for the inpatient hospital stay.

The division concludes that the total allowable for this admission is \$0.00. The respondent issued payment in the amount of \$0.00. Based upon the documentation submitted, no additional reimbursement can be recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result no additional reimbursement can be recommended.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

_____ Signature	_____ Medical Fee Dispute Resolution Officer	_____ 04/03/2013 Date
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_____ Signature	_____ Health Care Business Management Director	_____ 04/03/2013 Date
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YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.